IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 265 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VIJAY HATHISING SHAH

Versus

STATE OF GUJARAT,

Appearance:

MR AJ PATEL for Petitioners

GOVERNMENT PLEADER for Respondent No. 1

MR JAYESH A DAVE for Respondent No. 2

MR SUNIT S SHAH for Respondent No. 5

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 20/03/2001

ORAL JUDGEMENT

Heard Ld.counsel Mr.A.J.Patel for the petitioners, Ms.Punani for respondent No.1, Mr.J.A.Dave

for respondent Nos 2,3 & 4 and Mr.Sunit Shah for respondent No.5.

2. The dispute spins around Final Plot No.55 of T.P.Scheme No.26 of Vasna, Taluka and City Ahmedabad Urban Agglomeration admeasuring 356 Sq.Mtrs of land. The petitioners claim to be the owners and occupants of this land and according to them they are the co-owners of the said land along with the respondent No.5. The original S.No.94 admeasuring H.0-26-30 Sq.Mtrs and S.No.115 admeasuring H.0-19-22 Sq.Mtrs of village Vasna were owned and possessed by the petitioners and the respondent No.5, and their names were indicated as co-owners. On introduction of T.P.Scheme under the Town Planning Act the lands in question came to be consolidated in a block and were given Final Plot No.55. The area of the land was reduced from 4550 Sq.Mtrs to 2104 Sq.Mtrs.

On the Urban Land Ceiling Act, 1976 coming into force, the petitioners and the respondent No.5had filled in two separate From No.1 as required in Section 6 of the said Act to the Competent Authority indicating their respective holdings. After due process, the competent authority passed order on 6.1.1988 in respect of the lands of the petitioners and land admeasuring 350.60 Sq.Mtrs came to be declared as surplus. The petitioners preferred appeal being Appeal No.101/88 over the order of the competent authority before the Urban Land Tribunal, Ahmedabad. The said appeal was partly allowed by order dated 31.3.1990 and the order of the competent authority was modified. The petitioners, then, preferred Special Civil Application No.5630/91 before this court which came to be admitted. By virtue of Urban Land (Ceiling & Regulation) Repeal Act, 1999 coming into force the order is passed in that petition to the effect that the proceedings have abated.

3. Simultaneously, Form No.1 filled in by the respondent No.5 as required under section 6 of the ULC Act as co-owner came to be processed and the competent authority passed an order on 14.9.1984 declaring certain portion of the land of F.P.No.55 as surplus (annex "H"). The authority on 17.12.198 and the authority on 17.12.1985 modified the said order and passed an order (annexure "I").

4. According to the petitioners, the land in question was jointly owned and possessed by the petitioners and the respondent No.5 and it continues to be the property jointly owned by them. According to the petitioners, the property has never been partitioned so

far nor share of any of the co-owners is demarcated by metes and bounds at any time. According to the petitioners, the property continues to be owned and possessed by the petitioners and the respondent No.5 and as per law of Co-ownership, each portion of the property is held by each of the coowners. The portion of land of F.P.No.55 which may have vested in the State Government continues to be of the ownership of all the petitioners herein inasmuch as no partition or division has ever taken place against the coowners and nobody has filed any suit for partition of the said property and therefore the property continues to be the properly jointly owned and possessed by the petitioners and the respondent No.5. On the other hand, the case of the respondent Nos 2,3 & 4 is as emerging from the affidavit-in-reply filed by Dilipbhai Bhailalbhai Patel, the power of attorneyholder of the respondents is that in village Vasna the land bearing S.No.95 and other pieces of land were in coownership of the predecessors of the petitioners and the respondent No.5, but, in the year 1963, the predecessors of the petitioners and the respondent No.5 agreed to make partition and pursuant to that partition deed they became full and sole owner of a particular piece of land. The said partition deed was registered on 26.11.1963 and that they became sole owner of the respective properties. Entry No.2921 was also made on 18.2.85 in the record of rights. These two documents indicate that the petitioners are not the coowners of the disputed land after 26.11.1963 and they have already waived their right so far as the land admeasuring 356 Sq.Mtrs out of F.P.No.55 of T.P.Scheme No.26 of Vasna, Taluka and City Ahmedabad is concerned. It is also contended in the said affidavit in reply that the petition under Article 226 of the Constitution of India is not maintainable as question of facts can not be decided in a writ petition. It is suggested that for establishing the right as coowners the petitioners have to approach the Civil Court, and therefore, this petition may be dismissed.

5. Considering the contentions that are raised before this court, without entering into merits, this court is of the view that the petitioners seek to assert civil right which is disputed by respondent Nos 2, 3 & 4. Whether the properties were partitioned or not, whether the partition deed was executed or not, what were the properties included in the ownership and to what extent such partition was implemented are the questions which can only be adjudicated upon after considering the evidence that the parties may lead. These being disputed questions of facts, this court is not inclined to

entertain this petition and exercise its writ jurisdiction.

6. It is contended by Mr.Patel that petitioners if required to approach the Civil Court may be adversely affected as in the mean time further steps in respect of the property in question may be taken by the other side. There may be force in what Mr.Patel has contended, but appropriate remedies can be resorted to for protecting the rights of the petitioners even while civil remedies are resorted.

7. However, Mr.Patel's request for protecting the interest of the petitioners till they approach the Civil Court seems to be reasonable and can be granted. Therefore, the parties are directed to maintain statusquo in respect of the property in question for a period of one month from today during which the petitioners, if at all they choose to, may approach appropriate forum and obtain necessary orders. If the petitioners do not approach appropriate forum within one month from today, the direction for maintaining statusquo will stand vacated automatically. In the event the petitioners approach appropriate forum, the forum shall decide the question of granting interim relief, if any claimed, strictly in accordance with law without being influenced by the protection granted to the petitioners. The direction of statusquo granted by this court will come to an end automatically either on completion of one month from today or the petitioners' approaching the appropriate forum, whichever is earlier. Rule stands discharged. No costs.

20.3.2001 (A.L.DAVE,J)